



Virginia  
Regulatory  
Town Hall

## Exempt Action Final Regulation Agency Background Document

<b>Agency Name:</b>	State Water Control Board
<b>VAC Chapter Number:</b>	9 VAC 25-151-10 et seq.
<b>Regulation Title:</b>	General VPDES Permit Regulation For Discharges of Storm Water Associated With Industrial Activity
<b>Action Title:</b>	Amend Existing Regulation
<b>Date:</b>	March 30, 2004

Where a regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 9-6.14:1 et seq. of the *Code of Virginia*) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply the requirements of the Virginia Register Act (§ 9-6.18 et seq. of the *Code of Virginia*) and file the final regulation with the Registrar in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

**Note agency actions exempt pursuant to § 9-6.14:4.1(B)** do not require filing with the Registrar a Notice of Intended Regulatory Action, or at the proposed stage. When the regulation is promulgated and submitted to the Registrar, the agency need only provide a statement citing the specific Virginia Code section referencing the exemption and an authority certification letter from the Attorney General's Office. No specific format is required.

This form should be used for actions **exempt from the Administrative Process Act pursuant to § 9-6.14:4.1(C)** at the final stage. Note that agency actions exempt pursuant to § 9-6.14:4.1(C) of the APA do not require filing with the Registrar a Notice of Intended Regulatory Action, and at the proposed stage.

### Summary

*Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation, instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This regulation will reissue the existing general permit for industrial activity storm water discharges that will expire on June 30, 2004. The permit is modeled after the October 2000 US

EPA multi-sector industrial storm water general permit. The substantive changes between the proposed and final regulation are as follows:

- (1) Required that the benchmark monitoring waiver certification for inactive and unstaffed sites, and the pollutant-by-pollutant benchmark monitoring waiver certification be submitted to the Department, as well as maintained with the SWPPP.
- (2) Modified the "Water Quality Protection" special condition by removing the reference to "significant downstream impacts", and replacing it with "downstream pollution (as defined in § 62.1-44.3 of the Code of Virginia)", and added the following action that the Board may take: "may require the permittee to include and implement appropriate controls in the SWPPP to correct the problem".
- (3) Added a section on "Deadlines for Plan Preparation and Compliance" to the permit (Part III, Storm Water Pollution Prevention Plan) to clarify that facilities covered by the existing permit who are renewing coverage have until August 30, 2004 to update and implement changes to their SWPPP, and that facilities that are seeking new coverage under the permit must have the SWPPP prepared and implemented before they submit the Registration Statement.
- (4) Modified the "Routine Facility Inspections", the "Comprehensive Site Compliance Evaluation", and the "Signature and Plan Review - Required Modifications" sections of the permit (Part III, Storm Water Pollution Prevention Plan) to allow the Director to grant (in writing) an extension to the deadlines specified in the permit for the permittee to make corrections when deficiencies are found during inspections.
- (5) Modified the "Structural Controls - Other Controls" section of the permit (Part III, Storm Water Pollution Prevention Plan) to allow equivalent measures to be used in place of velocity dissipation devices, and the "Sector N - Vessel Breaking/Scrapping Activities" section of the permit (Part IV, Sector Specific Permit Requirements) to allow equivalent measures to be used in place of fixed/floating platforms, and in place of containerizing scrap metals and pollutants.

**Statement of Final Agency Action**

*Please provide a statement of the final action taken by the agency including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

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On March 23, 2004, the State Water Control Board adopted the amendment to the General VPDES Permit Regulation for Discharges of Storm Water Associated With Industrial Activity. The Board also asserted that they will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of the regulation.

**Family Impact Statement**

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode*

*the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The regulation amendment will have no direct impact on the institution of the family or family stability.

**Summary of Comments and Responses for the VPDES General Permit Regulation for Discharges of Storm Water Associated With Industrial Activity, 9 VAC 25-151-10 et seq.**

The public comment period for the draft regulation ran from December 1, 2003, through January 30, 2004. A public hearing was held in Richmond on January 13, 2004. The hearing served for both the industrial activity storm water general permit and the construction storm water general permit regulations. After the staff presentation on the regulations, there were no other speakers at the hearing. There were 10 non-staff people present at the hearing. Six letters providing written comments on these draft regulations were received during the comment period. This memo summarizes these written comments and provides responses.

**1. There is no provision in the draft permit to allow time for the permittees to update their Storm Water Pollution Prevention Plans (SWPPPs) after the effective date. Please revise the permit to allow at least 60 days after the effective date of the Permit to update the SWPPPs.**

Response: A section on "Deadlines for plan preparation and compliance" has been added.

**2. Special Condition for Water Quality Protection. The special condition for water quality protection set forth in the permit (Part I.B.7) does not afford "fair notice" prior to enforcement. To ensure that the special condition is interpreted and applied in a manner that comports with minimum constitutional safeguards, we urge DEQ to revise it as follows:**

- (a) Eliminate reference to "significant downstream impacts" (subjective and undefined); and
- (b) Substitute "appropriate enforcement action and/or require the permittee to obtain an individual permit" with "require the permittee to develop a supplemental BMP action plan describing SWPPP modifications that address the identified water quality concerns, require the permittee to submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining standards and/or require the permittee to submit an individual permit application. ..."

Response: If we follow the established DEQ policies and procedures for enforcement activities (and we must assume here that we will), then permittees will be afforded "fair notice" prior to any enforcement of this permit. We agree that the reference to "significant downstream impacts" is subjective and undefined. We have replaced that with "downstream pollution (as defined in § 62.1-44.3 of the Code of Virginia)", because this term defines what we are trying to control. We have also added, "may require the permittee to include and implement appropriate controls in the SWPPP to correct the problem;" to the list of actions the Board may take.

**3. Prescriptive Best Management Practices. We applaud DEQ's efforts to promote environmental protection through regulatory flexibility and operational efficiency. Although most of the BMPs in the proposed general permits reflect these efforts, several appear to be overly-prescriptive. In particular, we are concerned with DEQ's mandate to use specific BMPs in 9 VAC 25-151-80.B.2.d (velocity dissipation devices) and 9 VAC 25-151-210.C.5.a (fixed or floating platforms and scrap metal containers). As with the other BMPs included in the proposed general permits, DEQ should authorize permit holders to select BMPs based on available alternatives, new innovations and other**

**site-specific considerations. In no case should DEQ prescribe one BMP to the exclusion of others with the potential for equivalent or greater environmental protection.**

Response: The "velocity dissipation devices" section is actually 9 VAC 25-151-80.A.6.b(2)(d). The phrase "(or equivalent measures)" has been added to that section. The section on "fixed or floating platforms and scrap metal containers" is from the subsection added by DEQ to the "Scrap recycling and waste recycling facilities" sector (Sector N) to cover discharges from facilities engaged in dismantling ships, marine salvaging, and marine wrecking - ships for scrap. In order to allow facilities to select BMPs based on available alternatives, new innovations and other site-specific considerations, the following changes have been made. The sentence discussing "fixed or floating platforms" has been modified to add, "(or equivalent measures approved by the department)". The sentence discussing "scrap metal containers" has been changed as follows: "All scrap metals and pollutants shall be ~~containerized~~ collected in a manner to prevent releases (containerization is recommended).

**4. Time Limitations. The proposed regulatory changes reflect several inflexible time limitations, including those for visual storm water examinations, analytical monitoring, correction of deficiencies identified as part of routine facility inspections and revisions to the SWPPP following a comprehensive site compliance evaluation or notification by DEQ. We are concerned that these types of time limitations may be impracticable in practice.**

**For example, if a qualifying storm event occurs at night, the permit holder may not have staff on hand to conduct a visual examination. Even if it did, there may be overriding safety issues that prevent staff from conducting the examination within the prescribed time limitation. Likewise, if a routine facility examination uncovers a mechanical problem with a piece of equipment, it may take more time than allowed in the regulation to order and install replacement parts. Finally, if an SWPPP revision involves significant capital expenditures ( e.g., for replacement of a structural BMP), the permit holder may not be able to complete the revision within the prescribed time limitation.**

**For consistency and ease of implementation, DEQ should consider using a uniform time limitation (say, 60-90 days) for responsive measures (like correction of deficiencies or revision of the SWPPP) required by the regulations. Permit holders also should be afforded the opportunity to seek an extension of otherwise applicable deadlines, based on good cause factors like feasibility and safety. We urge DEQ to include such an opportunity in the final regulations.**

Response: The time limitations in the permit are taken directly from EPA's 10/2000 NPDES Industrial Storm Water Multi-sector General Permit. We previously modified 9 VAC 25-151-80.E.3 (Required modifications) to allow 60 days for the permittee to make required changes, rather than EPA's 30 day requirement. The time limitations in the permit are not new, and have been in both EPA's and DEQ's industrial storm water permits in similar form since 1993. For the routine facility inspections, the comprehensive site compliance evaluation, and the required modifications sections, a statement has been added to allow a later time period for compliance if granted in writing by the Director.

Regarding the comment on conducting visual inspections at night, the permit requires that these inspections be conducted during daylight hours.

**5. In addition to the minor modifications that you propose for revision in the permit, we ask you to amend Section II.K (Signatory Authority) of the proposed permit to be consistent with 9 V AC 25-31-110 which states,**

**9 V AC 25-31-110. Signatories to permit applications and reports.**

**A. Applications.**

All permit applications shall be signed as follows:

**1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of subsection A of this section, or by a duly authorized representative of that person.**

Response: The section has been changed.

**List of persons submitting comments on the VPDES General Permit Regulation for Discharges of Storm Water Associated With Industrial Activity (9 VAC 25-151-10 et seq.)**

<b>Name of Commenter</b>	<b>Representing</b>	<b>Comment Number</b>
Robin Sandell	Consultant for UPS	1
Robert J. Robertson	Virginia Manufacturers Association	2 - 4
T. Mayes Starke	Georgia-Pacific Corporation	5